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WHAT LAW GOVERNS CONTROVERSIES BETWEEN STATES. — The Federal Constitution vests in the Supreme Court jurisdiction over "controversies between two or more states." In the first important interstate controversy [1] that was brought before the Court, counsel for the defendant, in arguing for a demurrer to the jurisdiction, insisted that since the Constitution prescribed no rule of law to govern such cases, and as the common law had never been applied to the acts of states, there was no rule of law creating a cause of action, and hence that the declaration was demurrable. The Court, however, seems to have acted upon the suggestion of the opposing counsel and to have decided the case according to the principles and rules of justice, equity, and good conscience. But, as the Court is engaged principally in administering the common law, and as this case appears actually to have been decided according to common law principles, it amounted to an application of the common law. In subsequent boundary disputes [2] between states the Court seems to have followed this first case, and to have determined the matter according to common law notions. However, in dealing with states certain cases do arise in which the rules of the common law, which were evolved to govern the actions of individuals, might not be applicable; and one of the important unsettled problems which the Supreme Court must face is under what circumstances will the common law be unfit to decide state controversies, and what principle can be substituted for it.

In the recent case between Missouri and Illinois, in which the former asked for an injunction to restrain Illinois from permitting the sewage of Chicago to be conveyed into the Mississippi River by way of the drainage canal and the Illinois River, Mr. Justice Holmes questions whether the rules that obtain between individuals to determine what is

[1] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 4 How. (U. S.) 591.
[2] Virginia *v.* West Virginia, 11 Wall. (U. S.) 39.

a nuisance can be applied between states. He suggests that there must be such a pollution of the stream as would amount to a *casus belli* between independent nations to justify the Court in issuing an injunction. *Missouri* v. *Illinois, etc.*, 200 U. S. 496. There is a previous *dictum* [3] of the Court which seems contrary to this view and which intimates that the same rules for determining the existence of a nuisance as between individuals should be applied in controversies between states. That would certainly seem to be the better view. There is nothing in the nature of a state which justifies it in doing to another state what an individual cannot do to another. The only cases in which the Court had suggested that a special rule should be adopted to govern states were where the question is what lapse of time should be sufficient to create a title to land by prescription,[4] and the reason for a distinction in this class is that a state is much slower to act than an individual. But in these cases the Court is really applying the common law doctrine of prescription, though adopting a different measure of time to suit the exigencies of the occasion. So, too, in stating that fraud [5] and illegality [6] are defenses to interstate contracts the Court apparently applied the notions of justice derived from the common law; and no reason appears why a case of nuisance should not be treated in the same way.

Revocation without Hearing of Assignable Liquor License. — In the case of Yick Wo *v.* Hopkins [1] the Supreme Court of the United States held that a statute vesting uncontrolled discretion in a commission to grant licenses to operate laundries in wooden buildings was unconstitutional, since the discrimination between those who did and those who did not meet the approval of the commission was arbitrary and unjust. In a later case [2] the Court held that discretion could be given to a commission to grant licenses to sell liquor, and distinguished the preceding case on the ground that the laundry business, unlike the liquor business, could not have been entirely prohibited. Statutes have also been sustained which invested officials with authority to grant or withhold without any hearing licenses to move houses along the street,[3] to orate on Boston Common,[4] to sell cigarettes,[5] to maintain a cow-barn in the city,[6] and, finally, to retail milk.[7] In the last case, if not in several of the others, the business could not be entirely prohibited, and hence this means of distinguishing the Yick Wo case failed. Indeed these cases virtually overrule that decision, and indicate that the Supreme Court is recognizing the evident policy of relying on men's judgment in the administration of the laws, and of interfering only when this discretion is abused.

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[3] See South Carolina *v.* Georgia, 93 U. S. 4, 14.
[4] Indiana *v.* Kentucky, 136 U. S. 479.
[5] Virginia *v.* West Virginia, *supra*, at 61 *et seq.*
[6] See Houston, etc., Co. *v.* Texas, 177 U. S. 66, 97.

[1] 118 U. S. 356.
[2] Crowley *v.* Christensen, 137 U. S. 86.
[3] Wilson *v.* Eureka City, 173 U. S. 32.
[4] Davis *v.* Massachusetts, 167 U. S. 43.
[5] Gundling *v.* Chicago, 177 U. S. 183.
[6] Fischer *v.* St. Louis, 194 U. S. 361.
[7] People, etc., Lieberman *v.* Van De Carr, 28 Sup. Ct. Rep. 145.